

Finding of No Significant Impact
Designation of Critical Habitat for the Arkansas River Basin Population of
the Arkansas River Shiner

The U.S. Fish and Wildlife Service (Service) is designating critical habitat for the Arkansas River Basin population of the Arkansas River shiner (*Notropis girardi*), pursuant to the Endangered Species Act of 1973, as amended (Act). In total, approximately 1,095 kilometers (680 miles) of linear distance of rivers, including 91.4 meters (300 feet) of adjacent riparian areas measured laterally from each bank are included within the boundaries of the critical habitat designation. The areas that we have determined to be essential to the conservation of the Arkansas River shiner (shiner) include portions of the Canadian River (often referred to as the South Canadian River) in New Mexico, Texas, and Oklahoma, the Beaver/North Canadian River in Oklahoma, the Cimarron River in Kansas and Oklahoma, and the Arkansas River in Kansas. We have excluded from this designation all essential habitat in the Beaver/North Canadian River in Oklahoma and the Arkansas River in Kansas under authority of section 4(b)(2) of the Act, as presented in the October 6, 2004, proposed rule (69 FR 59859). In addition, we have excluded all previously proposed critical habitat in Unit 1a of the Canadian River in New Mexico and Texas and a portion of Unit 1b in Texas and Oklahoma under authority of section 4(b)(2) of the Act. In both instances, a conservation/management plan was developed that provided conservation benefits to the shiner. This action closely corresponds with Alternative II, Option A as presented in the draft environmental assessment.

General description of designated critical habitat

The Service is designating critical habitat in only a portion of Unit 1b, which includes the Canadian River extending approximately 356 kilometers (221 miles) from the State Highway 33 bridge near Thomas, Oklahoma, downstream to the Indian Nation Turnpike bridge northwest of McAlester, Oklahoma. This segment of the Canadian River supports a viable population of shiners and Unit 1b (including the area to be excluded) is the longest unfragmented reach in the Arkansas River Basin that still supports the Arkansas River shiner. This section is predominately in private ownership, with smaller tracts of tribal lands near Oklahoma City, Oklahoma.

All of Unit 3, encompassing approximately 460 km (286 mi) of the Cimarron River from the U.S. Highway 54 bridge in Seward County, Kansas downstream to the U.S. Highway 77 bridge in Logan, County Oklahoma is being designated. Historically, almost the entire Cimarron River mainstem, including the type locality for the species, and several of the major tributaries were inhabited by the Arkansas River shiner. Between 1985 and 1992, only 16 specimens of the Arkansas River shiner were collected from the Cimarron River. Arkansas River shiner specimens were not reported again until 2004 when eight Arkansas River shiners were collected near Guthrie, Oklahoma, by SWCA Environmental Consultants. Although this population is by no means secure, it continues to persist over time and appears to be at least marginally viable despite low numbers being captured over the last 13 years. Land ownership for Unit 3 is predominately private and lands are used primarily for livestock grazing and other types of agriculture.

General description of areas excluded from designation of critical habitat

Unit 1a

We excluded all essential lands in Unit 1a. Unit 1a encompasses 248 km (154 mi) of the Canadian River extending from the U.S. Highway 54 bridge near Logan, NM, downstream to the confluence with Coetas Creek, near Amarillo, Texas. This reach supports a viable population of the species and is considered to be within the "core" of the Arkansas River shiner population. Within New Mexico, this reach is predominantly in private ownership, although the State of New Mexico owns scattered tracts. The reach in Texas is in private ownership, except for a small segment on the extreme lower end that is owned by the National Park Service as part of the Lake Meredith National Recreation Area. We have excluded this stretch because we believe the benefits of excluding these units from this final critical habitat designation outweigh the benefits of designating the units as critical habitat due to the development and partial implementation of a conservation/management plan for the Arkansas River shiner.

Unit 1b

We excluded a 127.6 mile reach of essential lands in Unit 1b. This reach extends from the Oklahoma state line downstream to the State Highway 33 bridge near Thomas, Oklahoma. This reach is predominantly in private ownership, with limited areas of State ownership. The Oklahoma Department of Wildlife Conservation owns a small tract near Roll, Oklahoma (Packsaddle WMA). The Nature Conservancy also owns a small tract near Roll, Oklahoma (Four Canyons Preserve). We have excluded this reach because we believe the benefits of excluding these units from this final critical habitat designation outweigh the benefits of designating the units as critical habitat due to the development of a conservation/management plan for the Arkansas River shiner.

Units 2 and 4

We excluded all essential lands in Unit 2 from the final critical habitat designation pursuant to section 4(b)(2) of the Act. Unit 2 consists of 340 km (211 mi) of the Beaver/North Canadian River extending from Optima Dam in Texas County, Oklahoma, downstream to U.S. Highway 60/281 bridge in Major County, Oklahoma. Almost the entire Beaver/North Canadian River mainstem and at least one of the major tributaries (Deep Fork River) in Oklahoma were historically known to support Arkansas River shiner aggregations. At present, aquatic habitats in large areas of the drainage are degraded or unsuitable, either because of impoundments, reduced stream flows, or water quality impairment. A small aggregation of Arkansas River shiners may still persist between Optima Dam and the upper reaches of Canton Reservoir, based on the collection of four individuals since 1990. However, an assessment of fish communities and aquatic habitat conducted within this unit during 2000-2001 did not encounter the Arkansas River shiner. While habitat quality in this reach appears marginal, all of the primary constituent elements are present. However, we are uncertain if the Arkansas River shiner still inhabits this reach. Recovery activities likely will include reestablishing additional populations in this reach.

We also excluded all essential lands in Unit 4 from the final critical habitat designation under section 4(b)(2) of the Act. Unit 4 consists of 313 km (194 mi) of the Arkansas River extending from the confluence of the Pawnee River near Larned, Kansas, downstream to the Kansas/Oklahoma State line in Cowley County, Kansas. This stream segment contains one or more of the primary constituent elements, and recovery activities for the Arkansas River shiner likely will include reestablishing additional populations in this reach.

We have excluded both of these reaches because we believe the benefits of excluding these units from this final critical habitat designation outweigh the benefits of designating the units as critical habitat. A vital recovery component for this species will likely involve establishment of secure, self-sustaining populations in habitats from which the species has been extirpated. While we believe excluding historically occupied areas from the critical habitat designation could be detrimental to conservation of the species, we also believe negative public perceptions with respect to critical habitat could seriously hamper any restoration efforts. Establishing experimental populations using section 10(j) of the Act appears to be the most appropriate tool to utilize in future restoration efforts. We believe the provisions of section 10(j) would help foster an atmosphere of cooperation that would encourage future conservation actions. Section 10(j) of the Act enables us to designate certain populations of federally listed species that are released into the wild as "experimental." The circumstances under which this designation can be applied are the following: (1) the population is geographically separate from non-experimental populations of the same species (e.g., the population is reintroduced outside the species' current range but within its probable historic range); and (2) we determine that the release will further the conservation of the species. Section 10(j) is designed to increase our flexibility in managing an experimental population by allowing us to treat the population as threatened, regardless of the species status elsewhere in its range. In situations where we have experimental populations, certain section 9 prohibitions (e.g., harm, harass, capture) that apply to endangered and threatened species may no longer apply, and a special rule can be developed that contains the prohibitions and exceptions necessary and appropriate to conserve that species. This flexibility allows us to manage the experimental population in a manner that will ensure that current and future land, water, or air uses and activities will not be unnecessarily restricted and the population can be managed for recovery purposes.

Background

We first published a proposed designation of critical habitat for the Arkansas River shiner on June 30, 2000 (65 FR 40576). After review of all comments received in response to the proposed rule, we published a final rule designating critical habitat for the Arkansas River Basin population of the Arkansas River shiner on April 4, 2001 (66 FR 18002).

On April 25, 2002, the New Mexico Cattle Growers Association and 16 other plaintiffs filed a complaint in United States District Court for the District of New Mexico for alleged violations of the Act, Administrative Procedures Act, and the National Environmental Policy Act. A decision in that case was issued by Senior U. S. District Judge C. LeRoy Hansen in September of 2003. In accordance with that Memorandum Opinion, critical habitat for the

Arkansas River shiner was vacated and the Service was ordered to complete a proposed rulemaking to redesignate critical habitat by September of 2004 and a final rule by September of 2005.

On October 6, 2004, the Service published the proposed rule to designate critical habitat for the Arkansas River Basin population of the Arkansas River shiner (69 FR 59859). On April 28, 2005, we extended the public comment period for this action to June 17, 2005 (70 FR 21987). On August 1, 2005 we announced the availability of the draft economic analysis and draft environmental assessment and the time and locations for public hearings (70 FR 44078). In addition, we published notices in newspapers throughout Kansas, New Mexico, Oklahoma, and Texas.

Environmental Assessment

The Service analyzed four alternatives, including a no action alternative and Option A under Alternative II. Alternative I consisted of five proposed critical habitat units (1a, 1b, 2, 3, and 4) comprising about 1,244 river miles. Alternative II consisted of three proposed critical habitat units (1a, 1b, and 3) comprising about 839 river miles. Option A was formulated to address the anticipated development of a conservation plan for Unit 1a by the Canadian River Municipal Water Authority. This option analyzed the environmental impacts of excluding Unit 1a from the final critical habitat designation. Alternative II was the Service's preferred alternative. The Service selected Alternative II, with Option A and minor modifications. These modifications were to exclude a portion of Unit 1b (described above) due to an ongoing management plan and partnership within that area.

The Service requested information from, and coordinated development of this critical habitat designation with, appropriate State resource agencies in Kansas, New Mexico, Oklahoma, and Texas. The impact of the designation on State and local governments and their activities was fully considered in the economic analysis. In the final rule we categorized and responded to all applicable, substantive comments received during the public comment periods. All comments received were analyzed and, where appropriate, changes were incorporated into the final environmental assessment, economic analysis, and/or the final rule.

Section 4(b) of the Act states "The Secretary shall make determinations [of critical habitat] ... solely on the basis of the best scientific data available . . ." We considered the best scientific information available to us at this time, as required by the Act. This designation is based upon our most current understanding of the biology and requirements of the Arkansas River shiner. Based upon newly available information, coordination with land managers and stakeholders, and input received during the public comment period, we have made revisions to the areas designated as critical habitat, which will be reflected in the final rule. We are not aware of any reliable information that is currently available to us that was not considered in this designation process. This final determination constitutes our best assessment of areas needed for the conservation of the species.

One of the purposes of an environmental assessment is to briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement (EIS) or a finding of no significant impact (40 CFR 1508.9). An EIS is required only in instances where a proposed Federal action is expected to have a significant impact on the human environment. In order to determine whether designation of critical habitat would have such an effect, we prepared an environmental assessment that analyzes the effects of the designation. On August 1, 2005, we announced the availability in the Federal Register of the draft economic analysis and draft environmental assessment for the proposal to designate critical habitat for the Arkansas River shiner (70 FR 44078). We solicited data and comments from the public on these draft documents, as well as on all aspects of our proposal, so that we could consider these in this final determination.

Based on a review and evaluation of the information contained in the environmental assessment, it is my determination that the designation of critical habitat for the Arkansas River shiner does not constitute a major Federal action having a significant impact on the human environment under the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969 (as amended). Significance is determined by analyzing the context and intensity of a proposed action (40 CFR 1508.27).


Context refers to the setting of the proposed action and includes consideration of the affected region, affected interests, and locality (40 CFR 1508.27[a]). The context for both the short- and long-term effects of proposed designation of critical habitat includes the local areas that encompass the critical habitat units. The effects of proposed critical habitat designation, although long-term, would be small.

Intensity refers to the severity of an impact and is evaluated by considering ten factors (40 CFR 1508.27[b]). The intensity of potential impacts that may result from proposed designation of critical habitat for Arkansas River shiner is low.

- The potential impacts may be both beneficial and adverse, but minor.
- There would be no effects to public health or safety from proposed designation of critical habitat, and the proposed action would not affect unique characteristics of the geographic area.
- Potential impacts from critical habitat designation on the quality of the environment are unlikely to be highly controversial and do not involve any uncertain, unique, or unknown risks.
- Proposed designation of critical habitat for Arkansas River shiner does not set a precedent for future actions with significant effects and would not result in significant cumulative impacts.
- Significant cultural, historical, or scientific resources are not likely be affected by proposed designation of critical habitat.

- Proposed critical habitat designation would have a beneficial effect on Arkansas River shiner.
- Proposed critical habitat designation would not violate any federal, state, or local laws or requirements imposed for the protection of the environment.

As such, an environmental impact statement is not required.

ACTING 
Regional Director, Region 2
U.S. Fish and Wildlife Service

9/30/05
Date